IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

Wednesday, the Eighth day of June
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 778 of 2005

Between:

1 M/s. VST Constructions, Rep. by its Managing partner V.V. Srinivasa Rao, S/o. Raghavaiah, Machilipatnam, Krishna district.
2 Smt. V. Viyyamma, W/o. Raghavaiah, R/o. D.No. 1/359, Avanigada, Krishna district.

..... PETITIONERS

AND

1 The Syndicate Bank Regional Office, Rep. by its Authorised Officer/ Regional Manager Mogalrajupuram, Vijayawada-10.
2 The Branch Manager, Syndicate Bank, Machilipatnam, Krishna District.

3. S.Satyanarayana Rao, S/o. Ramakrishnaiah, aged about 70 years,

Resident of Avanigadda, Krishna District.

(3rd respondent is added as per orders in W.P.M.P.No.6344 of 2005,

dated 18-3-2005)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ or direction preferably writ of mandamus declaring the sale notification dt. 10-1-2005 issued by the 1st respondent published in local Eenadu New Paper dt. 18-1-2005 is illegal, arbitrary, contrary to OTS proposal and violative of principles of natural justice and consequently set aside the same and also permit the petitioners to clear the balance OTS amount of Rs.8.20 lakhs within a reasonable time, and pass such other or further orders.

Counsel for the Petitioners : MR. KOWTURU VINAYA KUMAR
Counsel for the Respondents : MR. A.KRISHNAM RAJU

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.778 OF 2005

ORDER :

This writ petition is filed seeking a declaration that the sale notification dated 10-1-2005 issued by the first respondent – Syndicate Bank published in Eenadu daily dated 18-1-2005 as arbitrary and illegal.

It is not in dispute that the first petitioner has availed the loan (Credit Limit Facility) of Rs.10 lakhs from the second respondent Bank in the year 2000. The second petitioner stood as guarantor and deposited title deeds of her house bearing No.1/359 situated at Avanigadda, Krishna district. It appears that the second respondent Bank has earlier issued notices dated 25-11-2002 and 23-9-2003 invoking the provisions under Section 13 of the A.P. Securitisation and Reconstruction of Financial Assets and Enforcement of Interest Act, 2002 (for short,

'the Act'). Aggrieved by the same, the second petitioner filed W.P.No.22072 of 2003 which was dismissed by this Court along with batch on 21-04-2004 granting liberty to avail the remedy under the Act. The petitioners state that they filed an appeal before the Debts Recovery Tribunal, Hyderabad on 29-6-2004, but the same was returned for want of jurisdiction. However, the petitioners approached the second respondent Bank in the month of October, 2004 and expressed their willingness for one time settlement. The same was accepted by the respondent and the amount due was settled at Rs.12 lakhs together with simple interest at the rate of 11% per annum. The petitioners claim that in pursuance thereof they have paid a total sum of Rs.3,80,000/-. However, the impugned auction notice was issued by the first respondent proposing to conduct sale of the house of the second petitioner. As per the said notification, the sale was scheduled to be held on 24-1-2005. Aggrieved by the said action of the respondents, this writ petition is filed.

The contention of the petitioners is that the impugned sale notification is ex facie illegal and in violation of the principles of natural justice since the same was issued without prior notice to the petitioners and without affording an opportunity of being heard. It is also alleged that though the petitioners made a representation objecting the proposed sale, the second respondent failed to take into consideration. Hence, this writ petition.

I have heard the learned Counsel for both parties and perused the material on record.

In the counter-affidavit filed on behalf of the respondents, it is stated that after the notice dated 25-11-2002 was served under Section 13(2) of the Act calling upon the 1st petitioner to pay an amount of Rs.14.59 lakhs, the 1st petitioner approached the Bank vide letter dated 18-12-2002 proposing to pay a sum of Rs.12.00 lakhs as full and final settlement and assured that he would be paying the entire amount by 30-6-2003. However, he did not make any payment till 4.11.2004 except Rs.25,000/- on 29-6-2003. The Bank did not take any further action on his assurance that he would be paying the entire dues. Thereafter, the Bank issued a possession notice on 23-9-2003 under Section 13 (4) of the Act. Since there was an interim order dated 27-10-

2003 in the writ petition directing the Bank not to create third party interest during the pendency of writ petition, the Bank did not take further steps for sale of the property. After the said writ petition was disposed of, the Bank issued a notice on 22-9-2004 calling upon the 2nd petitioner to pay the amount due in the account of the 1st petitioner and also informing that in default the Authorised Officer will dispose of the mortgaged properties. The sale notice dated 12-10-2004 was published in Eenadu (Krishna District Edition) on 13-10-2004 calling upon the 2nd petitioner to pay the entire amount due within 30 days and also informing that on her failure to do so, the property detailed in the said notice would be brought for sale. As there was no response to the sale notice dated 12-10-2004, the Authorised Officer issued notice of sale dated 3-11-2004 by inviting sealed tenders fixing the last date to receive the tenders as 23-11-2004 and the tenders will be opened on 25-11-2004. The said notice was published on 11-11-2004 in Eenadu and the Hindu. The Managing Partner of the 1st petitioner - Mr. V.Srinivasa Rao approached the authorised officer on the date of sale and vide his letter dated 25-11-2004 requested to postpone the sale proceedings offering to pay a sum of Rs.13.88 lakhs under one time settlement. The petitioner remitted a sum of Rs.90,000/- on 25-11-2004 and undertook to pay a further sum of Rs.4.90 lakhs on 2-12-2004 and Rs.6.90 lakhs on 31-12-2004 failing which the Bank would be at liberty to proceed further from the stage where the action is stopped to recover the amount. Thereafter, he paid an amount of Rs.40,559/- on 2-12-2004 and also a further sum of Rs.1,59,441/- on the same day by way of cheque which was cleared and credited to his account. However, thereafter he failed to pay the amounts as per the schedule agreed upon and committed default in payment of the amount which he offered under the one time settlement. The plea of the 1st petitioner that he was under an impression that the matter has been settled under the one time settlement is misconceived and without any basis. On the other hand, having agreed to pay the amounts, the 1st petitioner committed default and did not even approach the Bank even after the publication of the auction notice. In the circumstances, the auction was conducted and the sale was confirmed in favour of one Satyanarayana Rao on 24-1-2005. The Writ Petition is misconceived and liable to be dismissed with costs.

From the unrebutted averments in the counter-affidavit filed on behalf of the respondents, it is clear that on a request made by the petitioners the one time

settlement was agreed by the respondents subject to the condition that the first petitioner pays 50% of the amount payable under one time settlement. It is clear from the averments made in the affidavit of the petitioners that the first petitioner committed default in payment of the amount which he offered under one time settlement. The first petitioner failed to make even a representation seeking extension of time for making the payments.

It is also clear from the counter-affidavit that the tenders were opened on 24-01-2005 and thereafter the authorised officer conducted *inter se* bidding between the tenderers who submitted their bids and one Mr. S.Satyanarayana Rao was declared as successful bidder for a sum of Rs.12,70,000/-. It is stated in the counter-affidavit that the said fact was notified in the notice-board on the same day and the said Satyanarayana Rao's bid was confirmed on 24-1-2005 and he deposited 25% of the amount of the sale price including EMD amount immediately after the acceptance of his bid and he is entitled to pay the balance within 15 days thereafter.

Having regard to the material available on record as well as the unrebutted averments of the respondents in their counter-affidavit, I do not find any substance in the allegation of the petitioners that they were not given adequate opportunity to repay the loan amount. Since admittedly, the 1st petitioner has committed default in payment of amounts as per his own offer under the one time settlement, the mortgaged property was sold by the respondents on 24-1-2005 and the sale was already confirmed. The offer now made by the petitioners to pay the amounts due and to cancel the sale cannot be accepted at this stage. Since the sale in favour of Mr. S.Satyanarayana Rao was already confirmed, the Writ Petition is devoid of any merit and the same is accordingly dismissed. No costs.

_____

8th June, 2005.

gbs

To

1 The Authorised Officer/ Regional Manager,Syndicate Bank Regional Office, Mogalrajupuram, Vijayawada-10.
2 The Branch Manager, Syndicate Bank, Machilipatnam,
Krishna District.

3. Two CD copies.